

MINUTES OF THE MEETING OF THE
UNIFORM COMMERCIAL CODE COMMITTEE
OF THE STATE BAR OF CALIFORNIA

May 14, 2003

9:30 a.m.

Videoconference Meeting at
Morrison & Foerster's L.A., S.F., Palo Alto and San Diego Offices

The May, 2003 meeting of the Uniform Commercial Code Committee (the "Committee") was called to order at approximately 9:30 a.m. with Peter Szurley and Pauline Stevens presiding.

A. Administrative Matters.

1. Appointment of Secretary. Pamela Martinson was appointed as the secretary for the meeting.

2. Approval of April Meeting Minutes. The minutes of the April 4, 2003 meeting were approved in the form disseminated prior to the meeting, with minor corrections.

3. Confirmation of Future Meeting Dates/Locations. The Committee confirmed future meeting dates as follows:

June 10 (Tuesday): videoconference meeting at the offices of Morrison & Foerster in Los Angeles, San Diego, Palo Alto and San Francisco, 9:30 a.m.

July 30 (Wednesday): videoconference meeting as above.

August: not scheduled, but possible conference call to cover report of H. Sigman from NCCUSL.

September 24 (Wednesday): tentative date, with meeting likely by videoconference.

B. Secretary of State Automation Project. Kathleen Vasquez of the California Secretary of State's office joined the meeting by phone at approximately 9:45 a.m. and reported that her group is in the process of wrapping up development locally, and that further customization will take place in India shortly. She is beginning to schedule testing and training, with implementation still targeted for the end of this year. Ms. Vasquez reported that she recently met with the Banker's Advisory Group in Southern California for feedback and is forming a user's group with various service providers to obtain additional feedback during June.

The Committee's open letter sent to Ms. Vasquez expressed a desire for the ability to save filings in draft prior to their submission for filing, and she acknowledged that this feature would be included. Vasco Morais will follow up to review the XML format in which these files will be saved and transmitted for filing.

Ms. Vasquez addressed the ability to do a full wild card search of the database. This is possible, but the issue of fees for this service has not yet been resolved.

Peter Szurley expressed a desire to view the comments of other groups, with this Committee being able to have a “last look” and chance to comment on screen shots before the project is final. Ms. Vasquez indicated that this would be possible in the late summer or early fall. After being invited to join the next Committee meeting on June 10 for a further update, Ms. Vasquez left the meeting.

C. Committee Membership. The Committee considered the applications of 10 persons for membership on the Committee beginning in the Fall of 2003. As the terms of six members will expire in September, and two other members have recently resigned, there is a need for applicants. Committee size is intended to be 27 to 28 persons. Of the 10 applications, 8 were recommended for submission to the Executive Committee for approval: Robert Anderson, Jaryn Barker, Paul Raymond Barkas, Samantha Good, Brian Kilb, Doug Krause, Hugh Lawrence, and Konrad Schreier. Andy Erskine agreed to complete a matrix to be submitted to the Executive Committee with respect to these applicants.

Peter Szurley and Pauline Stevens will communicate to both approved applicants and certain existing members that attendance at meetings is expected. In the case of chronic offenders, this could open additional vacancies on the Committee.

D. Legal Opinion Task Force. Marty Fleisher, chair of the subcommittee, reported that a draft of the full report is now complete and has been circulated to the Committee for comment. Several members, some unrepresented firms and Steve Weise have provided input. Steve Weise met with the subcommittee on May 8, and expressed his concern over the length and a perceived lack of readability of the draft. All present at that meeting agreed that two major issues required further discussion and perhaps guidance from the Executive Committee, namely, priority opinions and the giving of perfection opinions where the law of a state other than California governs.

On the issue of other states’ laws, the Tri-Bar did not take a position, but did include an appendix advising giving the opinion based solely on a review of a CCH Guide or the like, if the opinion is given at all. The Committee discussed the issue at length, with a consensus emerging to keep the report neutral – that is, a firm may choose to give the opinion, and the report should neither encourage nor discourage this practice. It is appropriate to rely on CCH or other published reports, but a lawyer should not be forced to give even this limited opinion if they do not wish to do so. There was further extensive discussion of what opinions should or should not be asked for, with a policy discussion of whether the Committee’s role is to try to lead practice in this area.

With respect to priority opinions, the subcommittee found little need outside of certain specialized transactions such as securitizations. Tri-Bar terms the situation where a priority opinion is appropriate “rare”, and the Committee agreed. However, while strong resistance to giving any appearance of endorsing priority opinions was expressed, it was agreed that this is generally a policy issue for the Executive Committee. The subcommittee agreed to include

specific examples of priority opinions for transactions involving negotiable instruments and certificated securities, as these are the most typically required. Peter Szurley agreed to follow up with the Executive Committee for a reaction on the issues discussed.

E. Website Review and Development. The Committee has been provided with screen shots to review. Marked changes should be faxed to Vasco Morais. A discussion of what should be included on the site ensued. While the site should bear some similarity to other committees' sites, we can be creative in our content. Pauline Stevens asked that the open letter to Kathleen Vasquez on the automation project be included, and Peter Szurley suggested mentioning the potential Article 6 and 7 projects. Dena Cruz volunteered for a subcommittee to generate email messages to our constituency to get them more involved in the activities of the Committee, perhaps through reports, requests for input on issues, notices of pending legislation, etc.

The Committee discussed the development of a portion of the site for "members only". While acknowledging that this mechanism is effective in driving new membership, we believe our content needs more development first.

The subcommittee on legislative activities agreed to provide current content to Vasco Morais in the near term, prior to our June meeting.

F. Articles 3 and 4 Status Report. Pauline Stevens is working with the Financial Institutions Committee to get needed language for demand drafts. We understand that this committee will not oppose the amendments, but will not endorse them either. Pauline feels this will probably prevent Articles 3 and 4 from moving forward due to other opposition already expressed by the California Bankers Association. Pauline will check with the Executive Committee for further direction.

G. Article 6 Repeal Project. It was reported that Arizona is expected to introduce a bill to repeal that state's Article 6 next year, resulting in 41 states having repealed Article 6. The Committee should (1) update the now outdated report of Bryan Hull on Article 6 case law with a view to publication in the Business Law News, and (2) develop legislation in California to repeal this state's Article 6. Vicki Gilbert volunteered to join a subcommittee.

H. Article 7. The committee should establish a subcommittee to be ready to consider Article 7, as it is anticipated that NCCUSL will address it in June of this year. Arnold Rosenberg volunteered.

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The meeting was adjourned at approximately 12:05 p.m.